

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
 )  
JESSE J. McNABB )  
 )  
vs. ) No. 04-0544  
 )  
PEOPLES GAS LIGHT AND COKE COMPANY )  
 )  
Complaint as to billing/charges in )  
Chicago, Illinois. )  
 )

Chicago, Illinois  
October 18, 2005

Met, pursuant to notice at 1:30 p.m.

BEFORE :

Ms. Claudia Sainsot, Administrative Law Judge.

APPEARANCES:

MR. JUAN OOINK  
18 West Dundee  
Wheeling, Illinois 60090  
for Jesse J. McNabb;

MR. MARK L. GOLDSTEIN  
108 Wilmot Road  
Suite 330  
Deerfield, Illinois 60015  
for Peoples Gas.

SULLIVAN REPORTING COMPANY, by  
FRANCISCO E. CASTANEDA, CSR,  
License No. 084-004235

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I N D E X

Witnesses:	Direct	Cross	Re-direct	Re-cross	By Examiner
NONE.					

APPLICANT'S	E X H I B I T S	For Identification	In Evidence
	NONE.		

1                   ADMINISTRATIVE LAW JUDGE SAINSOT: By the  
2 authority of the Illinois Commerce Commission, I now  
3 call Docket 04-0544. It's a complaint of Jesse J.  
4 McNabb versus Peoples Light and Coke Company, and it  
5 concerns billing and charges in Chicago, Illinois.

6                   Will the parties identify themselves for  
7 the record please.

8                   MR. OOINK: Juan Ooink, O-o-i-n-k, on  
9 behalf of the Law Offices of Steven M. Goldman on  
10 behalf of Jesse McNabb, 18 West Dundee, Wheeling,  
11 Illinois 60090, (847) 215-2600.

12                  MR. GOLDSTEIN: On behalf of the  
13 Peoples Gas Light and Coke Company, Mark L.  
14 Goldstein, 108 Wilmot Road, Suite 330, Deerfield,  
15 Illinois 60015.  
16 My telephone number is (847) 580-5480. I have with  
17 me Mr. Brian Schmoldt. That's S-c-h-m-o-l-d-t of  
18 Peoples Gas.

19                  ADMINISTRATIVE LAW JUDGE SAINSOT:  
20 Okay. The reason I called you both down here is that  
21 yesterday the clerk's office informed me that we have  
22 a little problem with this case.

1                   Section 10, dash, 113 of the Public  
2   Utilities Act provides that if the Commission fails  
3   to enter a final order upon rehearing within 150 days  
4   after it grants rehearing, the application for  
5   rehearing shall be deemed to have been finally  
6   disposed of for purposes of an appeal from the order  
7   or decision covered by the application. And I cite  
8   220 ILCS 5, slash, 10, dash, 113.

9                   One would think that this provision  
10   concerns the appealability of the underlying order  
11   regarding the hearing. However, there are appellate  
12   court opinions that state that this language confers  
13   on 150 days for rehearing. And I cite Liberty  
14   Trucking versus ICC, 81 Ill. App. 3d, 466, 470 401,  
15   N.E. 2d 581. And that's a Second District case in  
16   1980.

17                   And the Commission granted rehearing in  
18   May in this case, and 150 days is approximately five  
19   months. The trial in this case was set pursuant to  
20   agreement for November, which is outside the five  
21   month period.

22                   However, by setting the trial outside

1 the five months period and proceeding with this case  
2 at a slow pace, I think both parties have  
3 constructively waived their right to assert the  
4 statute in question.

5 I did a little research. An implied  
6 waiver of a legal right arises when the conduct of  
7 the person against whom waiver is asserted is  
8 inconsistent with any intention other than to waive  
9 that right. Home Insurance Company versus Cincinnati  
10 Insurance Company, 213 Illinois 2d, 307, 326 to 27,  
11 821 N.E. 2d 269. And that is a 2004 case.

12 When is -- as is the case here, there's  
13 only one reasonable inference that can be drawn from  
14 the facts. Whether there is a waiver is a question  
15 of law, and I cite Liberty Mutual Insurance Company  
16 versus Westfield Insurance Company, 301 Ill. App. 3d  
17 49, 53, 703 N.E. 2d 439, First District 1998.

18 Both parties are presumed to know the  
19 law, and I cite People versus Grever, G-r-e-v-e-r,  
20 353 Ill. App. 3d 736, 772, 819 N.E. 2d 6, and that's  
21 a Second District case 2004.

22 Both parties, therefore, are presumed

1       to have chosen to give up this right when proceeding  
2       with the trial date outside the 150 days.

3                       Well, that's why I brought you down here  
4       to tell you that so we're all clear when we go to  
5       trial what's going to happen.

6                       MR. OOINK:   I understand.

7                       ADMINISTRATIVE LAW JUDGE SAINSOT:  
8       Okay.

9                       MR. GOLDSTEIN:   Peoples Gas will be  
10      prepared for the evidentiary hearing on November  
11      17th.   I'm not certain that that constitutes a waiver  
12      of any rights, but we will abide by the Judge's  
13      ruling and be prepared to go forward on the 17th of  
14      November.  
15      We will have Mr. Steven Kroll here pursuant to  
16      subpoena.

17                      ADMINISTRATIVE LAW JUDGE SAINSOT:  
18      Okay.   Thank you.

19                                       (Whereupon, further proceedings  
20                                       in the above-entitled matter  
21                                       were continued to November 17,  
22                                       2005.)